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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,901	09/04/2001	Stephan Kleindiek	1750	6031

27233 7590 12/24/2002

MALCOLM J ROMANO
116 S CITRUS AVE
LOS ANGELES, CA 90036

EXAMINER

BUDD, MARK OSBORNE

ART UNIT

PAPER NUMBER

2834

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

914 901

Applicant(s)

Klein Diek

Examiner

M. Bodd

Group Art Unit

2834

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 10-17-02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1, 3-5 and 7-9 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1, 3-5 and 7-9 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 2834

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grahn, WO (169) or Europe (454).

The references teach a rotor bearing (support) having a piezoelectric element connected to impart a limited rotary motion of the bearing member. Attention is referenced to Grahn (figs. 25 and 33, Europe (454) (figs. 1, 2, 6 and 7) and WO (169) (figs. 1 and 3). The references don't explicitly teach a particular coefficient of friction for the bearing/rotor interface and some structural shapes. However, optimizing a known device via selection of suitable dimensions, materials or shapes has long been held to be within the skill expected of the routineer. Thus the selection of friction coefficients would have been obvious to one of ordinary skill in the art. It is noted that the "wherein the rotor is supported --- in a fashion that allows --- and wherein the friction between --- the rotor does not follow --- but follows ---" is a functional statement and adds not additional structural limitations. Courts have found that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). (Apparatus claims cover what a device is, not what a device does". Hewlett-Packard Co. V. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ 2d 1525, 1528 (Fed. Cir. 1990). (Emphasis in original).

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It is again noted that the subject matter of claim 7 is not adequately disclosed, there being no written description or illustration of any drive circuit.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Budd/ds

12/20/02

MARK BUDD
PRIMARY EXAMINER
ART UNIT 2834